HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.23258 of 2006

Between:

Sakina Banu
and another

… Petitioner

AND

Municipal Corporation of Hyderabad
represented by its Commissioner,
Tank Bund Road, Hyderabad,
and two others.

… Respondents

ORDER

Counsel for the petitioners : Shri R.A.Achuthanand

Counsel for respondent No.1 : Shri G. Rama Rao

10-11-2006

Per Shri G.S.Singhvi, CJ

This is the third round of litigation by the petitioners, who have prayed for issue of a mandamus to respondent Nos.1 and 2 to remove illegal and unauthorised construction of three storeyed building in premises bearing No.1-6-770 measuring 220 square yards situated at Pathan Basthi, Musheerabad, Hyderabad.

It is borne out from the record that Writ Petition No.9971 of 2005 filed by the petitioners with the complaint that respondent No.3 - Smt. Noorunnisa Begum has raised construction in violation of the sanctioned plan and the official respondents have not taken action to demolish the illegal structures, was disposed of by the learned Single Judge with a direction to the concerned authority to examine the grievance of the writ petitioners and decide the same in accordance with law. Writ Appeal No.1477 of 2005 filed by respondent No.3 against the order of the learned Single Judge was disposed of by the Division Bench on 04-08-2005 with the direction that the concerned authority of the Municipal Corporation of Hyderabad shall decide afresh the representation of the writ petitioners after hearing the parties.

In the meanwhile, respondent No.3 filed suit for injunction against respondent No.1 by alleging that the authorities concerned were seeking to demolish her property bearing municipal No.1-6-770. The same was registered as O.S.No.6682 of 2005. She also filed an application for temporary injunction, which was registered as I.A.No.528 of 2006. By an order dated 28-03-2006, VI Junior Civil Judge, City Civil Court, Hyderabad dismissed the application for injunction. After one month and six days, the petitioners submitted representation dated 03-05-2006 to the concerned authorities for

removal of illegal construction. This was followed by filing of second writ petition, which was registered as Writ Petition No.13011 of 2006 and was disposed of by learned Single Judge on 29-06-2006 with the direction that the representation of the writ petitioners be disposed of by the concerned authorities within four weeks.

It is also borne out from the record that feeling aggrieved by the alleged non-compliance of order dated 29-06-2006 passed in Writ Petition No.13011 of 2006, the petitioners filed Contempt Case No.887 of 2006 which is still pending.

In this petition, the petitioners have complained that the official respondents have failed to take action for demolition of illegal and unauthorised construction raised by respondent No.3 despite making of representation dated 3-5-2006.

Shri G.Rama Rao, learned counsel appearing for respondent Nos.1 and 2, on the basis of instructions given to him by the officers of the Municipal Corporation of Hyderabad, made a statement that even before the receipt of representation dated
03-05-2006, notice under Sections 452 and 636 of Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') was issued and served on respondent No.3, but action for demolition could not be taken in view of the order of status quo passed in Writ Petition No.21761 of 2006 filed by the said respondent. This has not been controverted by learned counsel for the petitioners.

From what has been stated above, it is clear that the concerned authorities of the Municipal Corporation of Hyderabad have taken action for demolition of the alleged illegal constructions made by respondent No.3, but their effort has been temporarily frustrated on account of an interim order passed by this Court in Writ Petition No.21761 of 2006 filed by respondent No.3. Therefore, it is not possible to record a finding that respondent Nos.1 and 2 have failed to take action in accordance with law warranting issuance of a writ of mandamus to them to enforce the provisions of the Act.

With the above observations, the writ petition is dismissed. However, liberty is given to the petitioners to get themselves impleaded as parties in Writ Petition No.21761 of 2006 filed by respondent No.3, if they have already not been impleaded as respondents.

As a sequel to dismissal of the writ petition, W.P.M.P.No.29623 of 2006 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

10-11-2006

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